

FINAL STATEMENT OF REASONS

Transition Silviculture, 2005

Title 14 of the California Code of Regulations (14 CCR):

Amend:

§ 913.2(b) [933.2(b), 953.2(b)] **Regeneration Methods Used in Unevenaged Management; Transition**

§ 913.11(c)(1)&(2) [933.11(c)(1)&(2), 953.11(c)(1)&(2)]
Maximum Sustained Production of High Quality Timber Products

UPDATED INFORMATION: OVERVIEW OF FINAL ADOPTED REGULATORY ACTION

The adopted changes to the Forest Practice Rules (FPRs) are related to amending the “Transition” silvicultural method. This method permits tree harvesting to develop an unevenaged forest stand.

The main parts of the adopted amendments are to permit the use of smaller sized seed trees (greater than 12 inches diameter breast height) as part of the post harvest forest stand (with unique post harvest stocking standards specific to the Coast and Northern and Southern Forest Practice Districts); and increase the limitation of stands suitable for this method to contain no more than 50 square feet of basal area above the selection silviculture method standard, compared to the existing standard in the FPRs of 25 square feet of basal area.

On July 14, 2004, after reviewing comment and correspondence from concerned citizens and other agencies, and considering testimony presented at a public hearing, the State Board of Forestry and Fire Protection (Board) adopted amendments to FPRs as proposed in its public notice published on April 1, 2005. The final adopted regulation language included changes that were determined by the Board to have been non substantial in accordance with GC § 11346.8(c). The following changes to the regulation language in the 45 day notice published on April 1, 2004 are as follows:

- **Delete proposed language in § 913.2(b) [933.2(b), 953.2(b)] and use existing FPR language**

The Board chose to adopt the existing regulation language for this section as found the FPRs, instead of the revised language proposed in the regulation as part of the 45-Day Notice of public hearing. The Board found that the existing language was clear and consistent with the adopted changes. The existing language allows the transition method to be used to create an uneven-aged forest stand from a stand that is currently unbalanced, irregular, or even-aged, but does not contain sufficient trees to meet the

minimum basal area, size and phenotype requirements specified under the seed tree method. The adequacy of the existing language made the proposed changes unnecessary.

➤ **Adopt Option 1 under § 913.2(b)(3) [933.2(b)(3), 953.2(b)(3)]**

The Board chose to adopt Option 1 as proposed in the regulation language of 45-Day Notice of public hearing. This option increased the limitation of stands suitable for this method to contain no more than 50 square feet of basal area above the selection silviculture method standard. The existing standard in the FPRs is 25 square feet of basal area above the selection silvicultural method standard.

➤ **Minor editorial revisions for clarity and enforceability**

Several grammatical edits were made rearranging sentence wording to more clearly and simply state the intended requirements.

**ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD
AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Board has considered alternatives to the regulation proposed. The alternatives primarily involve various levels of preharvest stocking that would be applicable and appropriate for application of the transition silviculture method.

Alternative 1: Retain the existing rule language in the FPRs. This alternative would have retained the existing upper limit of preharvest stand basal area stocking applicable for use with the transition method. The maximum preharvest basal area per acre under existing rules is 25 square feet per acre above the selection silviculture system minimum stocking levels (14 CCR 913.2(a)(2)(A), [933.2(a)(2)(A), 953.2(a)(2)(A)]). This alternative was rejected as it did not address the fundamental necessities of the regulation amendment. These include that the existing Transition rule was not usable for many smaller land owners with forest conditions that could benefit from the transition silvicultural method; the existing rule has overly restrictive preharvest stocking requirements precluding appropriate use of the transition method; and restrictive post harvest stocking standards do not take into account preharvest conditions.

Alternative #2: High levels of pre harvest stocking as a limit for application of the transition method: This alternative would raise the preharvest stocking limit to stands with less than 300 square feet of basal area. While this would provide some assurance that well stocked stands are not depleted with the application of the transition system, the Board rejected this alternative as it avoidance of the risk of depletion of well stocked stands was not adequately addressed.

Altetrnative#3: Permit all forest types and site productivity classes to use the adopted transition method: This alternative would have allowed all forest types and site classes (growing capacity index) to use the adopted transition method. This alternative would provide the greatest flexibility for use of the transition method, and provide the greatest opportunity for landowners to convert their forests to an unevenaged system. This alternative was rejected because it included highly productive and well

stocked coastal redwood forests where application of a transition method was determined to be inappropriate. The Board determined that in these cases, small diameter size, high site, well stocked coastal forests are more appropriately managed to meet Maximum Sustainable Production Goals with commercial thinning or other even-aged methods. The Board further determined that permitting transition silviculture on these lands presents an unacceptable risk to stand depletion upon application of the adopted transition method.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any adverse environmental effects as a result of the proposed rules. These rules are expressly developed to improve protection of resources during timber harvesting and maintain minimum resource conservation standards.

The most substantial potential environmental change due to this rule is permitting the post harvest seed tree stocking standard (as required in the proposed amendment under subsection § 913.2(b)(6)[933.2(b)(6), 953.2(b)(6)] to be met with 12 inch or greater dbh trees instead of 18 inch or greater dbh trees, when the 18 inch trees are not present in the preharvest stand. However, the amendment requires retaining 18 inch and greater dbh suitable seed trees if they are present in the preharvest stand. As such, there is no change in the environmental protection provided by the existing rule.

Other potential environmental impacts from this regulation are the potential for depletion of well stocked stands given the application of the subsection § 913.2 (b)(3) [933.2(b)(3), 953.2(b)(3)]. This subsection modified the preharvest stocking limitation for stands suitable for the transition method to permit stands which contain no more than 50 square feet of basal area above the selection silviculture method standard to be applicable for this method. By raising the upper basal area stocking limits, well stocked stands could be reduced to stocking levels less than their optimum growing capacity. This concern is mitigated by inclusion of subsection § 913.2(b)(4)[933.2(b)(4), 953.2(b)(4)]. This subsection requires that premarking and review prior to harvesting. Such premarking and review will help provide a predicted outcome, and demonstrate that depletion is not a likely outcome.

In addition to the above mitigations, all projects proposing to utilize the methods allowed under this rulemaking action would be required to adhere to all other existing FPRs and the Forest Practice Act. The provisions of the rules must be followed by Registered Professional Foresters (RPFs) in preparing THPs, and by the Director in reviewing such Plans to achieve the policies described in Sections 4512, 4513, of the Act, 21000, 21001, and 21002 of the Public Resources Code (PRC), and Sections 51101, 51102 and 51115.1 of the Government Code. Pursuant to 14 CCR sec. 896, no THP shall be approved which fails to adopt feasible mitigation measures or alternatives from the range of measures set out or provided for in the rules which would substantially lessen or avoid significant adverse impacts which the activity may have on the environment. The THP process substitutes for the EIR process under California Environmental Quality Act (CEQA) because the timber harvesting regulatory program has been certified pursuant to PRC

Section 21080.5 and therefore receives a multidisciplinary review to ensure protection of resources and conformance with all applicable laws and regulations.

ALTERNATIVES CONSIDERED TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS

Pursuant to GC section 11346.9(a)(4), the Board has determined that no other alternative it considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board has identified alternatives that would lessen any adverse economic impact on small businesses. These include:

Alternative #2: High levels of pre harvest stocking as a limit for application of the transition method: This alternative would have raised the preharvest stocking limit to stands with less than 300 square feet of basal area. While this would provide some assurance that well stocked stands are not depleted with the application of the transition system, the Board rejected this alternative as its avoidance of the risk of depletion of well stocked stands was not adequately addressed.

Alternative #3: Permit all forest types and site productivity classes to use the adopted transition method: This alternative would have allowed all forest types and site classes (growing capacity index) to use the adopted transition method. This alternative would provide the greatest flexibility for use of the transition method, and provide the greatest opportunity for landowners to convert their forests to an unevenaged system. This alternative was rejected because it included highly productive and well stocked coastal redwood forests where application of a transition method was determined to be inappropriate. The Board determined that in these cases, small diameter size, high site, well stocked coastal forests are more appropriately managed to meet Maximum Sustainable Production Goals with commercial thinning or other even-aged methods. The Board further determined that permitting transition silviculture on these lands presents an unacceptable risk to stand depletion upon application of the adopted transition method.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board staff estimated that this regulation should not have any adverse economic impact on any business. The amendment generally provides a wider range of conditions for which the transition method can be used, thus providing greater opportunities for use and reduction of identified barriers to use.

ADDITIONAL RELEVANT DOCUMENTS RELIED UPON

The following are additional documents were provided for the Board's consideration during the rulemaking process to supplement previous information submitted to the Board and referenced in the *Initial Statement of Reasons*: None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business.
- The proposed rules do not conflict with, or duplicate Federal regulations.

Pursuant to Government Code § 11346.2(b)(5): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

SUMMARY OF LAWS RELATING TO THE REGULATION

The Z'berg - Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the State's interest in the use, restoration, and protection of the forest resources. In this Act, Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. Public Resources Code Sections 4512, 4513 and 4551, gives the Board the authority to adopt such rules and

regulations necessary to assure continuous growing and harvesting of commercial forest tree species; and to protect the soil, air, fish, wildlife and water resources.

PUBLIC COMMENTS AND RESPONSE

See: Response to 45 Day Notice Public and Hearing Comments in TAB 4 of the official rulemaking file.

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